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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DONNA ANN GABRIELE CHECHELE,

Plaintiff,

– v. –

SAI YUEN HO (a/k/a BILLY HO),

Defendant,

– and –

BLACKBERRY LIMITED,

Nominal Defendant.

ECF CASE

No. 20-cv-10036

COMPLAINT FOR RECOVERY  
OF SHORT-SWING PROFIT  
UNDER 15 U.S.C. § 78p(b)

Plaintiff Donna Ann Gabriele Chechele (“Plaintiff”), by her undersigned attorneys, pleads for her complaint as follows:

**JURISDICTION AND VENUE**

1. This is an action for disgorgement under Section 16(b) of the Securities Exchange Act of 1934, as amended (the “Act”), 15 U.S.C. § 78p(b).
2. Jurisdiction is conferred on this Court by Section 27 of the Act, 15 U.S.C. § 78aa, and by 28 U.S.C. § 1331.

3. Venue lies in this District under Section 27 of the Act and under 28 U.S.C. § 1391 because (a) Nominal Defendant BlackBerry Limited (“BlackBerry”) transacts substantial business in this District, operating a flagship store in the heart of the financial district of lower Manhattan; (b) the purchase and sales of securities described in paragraphs 7-10 below were executed in ordinary brokerage transactions through the facilities of the New York Stock Exchange LLC, a national securities exchange registered under Section 6 of the Act, 15 U.S.C. § 78f, and located in this District; and (c) Defendant Sai Yuen Ho (a/k/a Billy Ho) (“Ho”) resides outside the United States and therefore may be sued in any judicial district of the United States.

### **THE PARTIES**

4. Plaintiff is a natural person, a resident of the State of New Jersey, and a shareholder of BlackBerry.

5. Defendant Sai Yuen Ho (a/k/a Billy Ho), whom Plaintiff refers to as “Ho,” is a natural person and a resident of Ontario, Canada. At all relevant times, Ho served as BlackBerry’s “Executive Vice President, BlackBerry Spark Group Products and Value Added Solutions.”

6. Nominal Defendant BlackBerry Limited, which Plaintiff refers to as “BlackBerry,” is a corporation formed under the law of Ontario, Canada. At all relevant times, BlackBerry’s common shares were registered under Section 12(b) of the Act, 15 U.S.C. § 78l(b), and were listed for trading on the New York Stock Exchange. This action is brought in the right and for the benefit of BlackBerry, which is named as a nominal defendant solely to ensure that all necessary parties are before the Court.

## FACTUAL ALLEGATIONS

7. On April 8, 2020, Ho purchased 10,000 Blackberry common shares on the open market at a weighted average price of \$3.79 per share.

8. On September 25, 2020, Ho sold 8,230 Blackberry common shares on the open market at a weighted average price of \$4.68 per share.

9. On September 29, 2020, Ho sold 12,694 Blackberry common shares on the open market at a weighted average price of \$4.67 per share.

10. On October 1, 2020, Ho sold 4,519 Blackberry common shares on the open market at a weighted average price of \$4.42 per share.

11. Ho reported the transactions in paragraphs 7-10 above in Statements of Changes in Beneficial Ownership on Form 4 filed with the SEC on April 4, 2020, September 29, 2020, October 1, 2020, and October 5, 2020, respectively.

12. Through her counsel, Plaintiff made demand for recovery of Ho's "short-swing" profit under Section 16(b) of the Act by e-mails to BlackBerry on September 29 and October 1, 2020.

13. An in-house attorney responded on October 5, 2020 that BlackBerry was "investigating the matter," but Plaintiff's counsel was never informed of any recovery, and BlackBerry has stopped returning counsel's calls and e-mails.

14. Sixty days have now passed since Plaintiff's demand was made without any evidence of a recovery, and BlackBerry has failed or refused to bring suit against Ho. Further delay would be a futile gesture.

**SOLE CLAIM FOR RELIEF:  
DISGORGEMENT UNDER 15 U.S.C. § 78p(b)**

15. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-14 above.

16. At all relevant times, Ho was an officer of BlackBerry subject to Section 16(b) of the Act.

17. While subject to Section 16(b), Ho purchased and sold BlackBerry's common shares as further described herein.

18. Ho's sales of BlackBerry's common shares described herein were made within less than six months of his purchase of BlackBerry's common shares described herein.

19. Ho's sales of BlackBerry's common shares described herein were made at higher prices than his purchase of BlackBerry's common shares described herein.

20. Ho had a pecuniary interest, directly or indirectly, in each purchase and sale of BlackBerry's common shares described herein.

21. Under the "lowest-in, highest-out" method for computing realized profit pursuant to Section 16(b) of the Act, Ho realized a profit of approximately \$8,882.30 from his purchase and sales of BlackBerry's common shares described herein.

22. Under Section 16(b) of the Act, the profit realized by Ho as described in paragraph 21 above inured to BlackBerry and remains BlackBerry's lawful property, recoverable by Plaintiff in its stead, BlackBerry having failed or refused to bring suit against Ho despite Plaintiff's due demand.

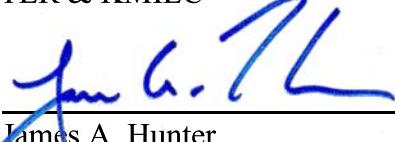
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays this Court for judgment:

- (a) Requiring Ho to account for and pay over to BlackBerry the short-swing profit realized and retained by him in violation of Section 16(b) of the Act in a total amount not less than \$8,882.30, together with appropriate pre- and post-judgment interest and the costs of this suit;
- (b) Awarding Plaintiff her costs and disbursements including reasonable attorney's, accountant's, and expert witness fees; and
- (c) Granting Plaintiff such further relief as the Court deems just and proper.

Dated: December 1, 2020  
Pipersville, Pennsylvania

HUNTER & KMIEC

By: 

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